REMARKS

Claims 1-15 and 31-44 are pending in the application.

Claims 1-15 and 31-44 were rejected in the most recent office action.

Claim 31 is herein amended to better recite the invention. The amendment to claim 31 is not made for any reason of patentability since the Smith reference is not a proper § 102(a) reference and the original claim 31 was already patentably distinguishable over the cited art at least in that the cited art does not teach the processor is configured to select one or more auxiliary rendering attributes based on the one or more non-positional attributes.

Section 102 Rejection

Claims 1, 2, 5, 9-11, 13, 15, 31-34 and 40-43 were rejected under 35 U.S.C. Section 102(a) as being disclosed by Smith et al. (US Patent No. 6,476,829) (hereinafter referred to simply as "Smith"). These rejections are respectfully traversed based on the following reasoning.

First, Smith is not prior art under 35 U.S.C. § 102(a). "The statutory language 'known or used by others in this country' (35 U.S.C. § 102(a)), means knowledge or use which is accessible to the public." M.P.E.P. § 2132(I) citing *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986) (emphasis added). "For 35 U.S.C. § 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application." M.P.E.P. § 706.02(a)(II)(C) (emphasis added). Since the Smith patent was not published until Nov. 5, 2002, well after the present application's filing date of Oct. 3, 2001, the Smith patent cannot be used as prior art under 35 U.S.C. § 102(a). Therefore, the rejection is improper.

Furthermore, as discussed below, Smith does not anticipate Applicant's claimed invention.

Claim 1 recites as follows:

A method for rendering and displaying information using a computer graphics system, the method comprising:

receiving data corresponding to a plurality of objects to be rendered, wherein the data includes a first data value and a second data value for each object;

using the first and second data values for each object to assign each object a first non-positional rendering attribute and a second non-positional rendering attribute;

using the first and second non-positional rendering attributes to select a third non-positional rendering attribute; and

rendering a scene including at least a subset of the plurality of objects, wherein said rendering is performed according the first, second, and third non-positional rendering attributes, and wherein the scene is displayable on a display device.

Notice that Claim 1 recites "using the first and second non-positional rendering attributes to select a third non-positional rendering attribute" and that "said rendering is performed according the first, second, and third non-positional rendering attributes". Smith nowhere teaches or suggests these features.

In the *Response to Arguments* section, the Office Action states:

Smith also exemplifies [in col. 1, lns. 23-40 and col. 2, lns. 30-40], for the element of claim 1; "using the first [brightness] and second [size {larger, smaller}] non-positional rendering attributes to select a third [fadedness {more or less prominent}] non-positional rendering attribute".

Applicant respectfully disagrees. The cited passages (i.e., Col. 1, lines 23-40 and Col. 2, lines 30-40) in no way suggest that a first non-positional rendering attribute and a second non-positional rendering attribute are used to select a third non-positional rendering attribute and that a scene is rendered according to all three non-positional attributes.

Col. 1, lines 23-40 recites as follows:

More information can be conveyed in the graphical display if certain parameters of the data are represented by non-positional display attributes, such as color or size.

For example, in order to represent a set of data wherein each data point has four different dimensions, the first dimension and the second dimension of a data point can be represented by a horizontal and a vertical location of the data point on a display. The third dimension can be represented by the color of the data point on the display. Finally, the fourth dimension can be represented by

> the size of the data point on the display. In this way, four different dimensions can be represented for each data point on a two-dimensional display.
>
> In using a non-positional display attribute, such as brightness, to display a data value, it is advantageous to provide a wide range of brightness values to represent a corresponding range of data values.

This passage teaches that data points in a multi-dimensional space may be represented on a display using a combination of positional display attributes and non-positional display attributes. A particular example is given where a 4-dimensional point is represented by horizontal location, vertical location, color and size. Horizontal location and vertical location are examples of positional display attributes. Color and size are examples of non-positional display attributes. The last paragraph of this passage indicates that brightness is also an example of a non-positional display attribute. Note that this passage merely gives examples of non-positional display attributes and contains no suggestion that a first non-positional attribute and a second non-positional attribute may be used to select a third non-positional attribute and the scene is rendered according to all three non-positional attributes.

Col. 2, lines 30-40 recites as follows:

> In one embodiment of the present invention, the non-positional display attribute is fadedness. In this embodiment, a display attribute value that results in the object being more faded in the display is less prominent. Conversely, a display attribute value that results in the object being less faded in the display is more prominent. Note that the term "prominence" is a measure of how noticeable an object is on the display relative to other objects. For example, objects that appear brighter or larger are generally more prominent that objects that appear dimmer or smaller.

In this passage, Smith indicates fadedness as another example of a non-positional display attribute. Furthermore, Smith makes an observation about a viewer's visual perception. Namely, to a viewer objects appear more prominent when they are less faded, when they are brighter, or when they are larger. There is absolutely no suggestion in this passage (or, in any other passage of Smith) that a first non-positional attribute and a second non-positional attribute may be used to <u>select</u> a third non-positional attribute and that the scene is <u>rendered according to all three</u> non-positional attributes. In particular, there is no evidence for the Examiner's assertion that Smith exemplifies using brightness and size to select fadedness.

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Also in the *Response to Arguments* section, the Examiner states:

> Wherein [the non-positional display attribute fadedness] is more or less prominent (a measure of how noticeable an object is on the display relative to other objects) results in an object that appears "selected" brighter [brightness], larger or smaller [size].

Applicant has difficulty in decoding this sentence and respectfully requests clarification.

Smith nowhere teaches or suggests that the fadedness of an object may be used to select a brightness and/or a size for the object. Applicant recognizes that the fadedness, brightness and size of a displayed object each have a significant role in determining how noticeable the object is to a viewer. However, the extent of noticeability and the general appearance of an object due to its fadedness, brightness and/or size have nothing to do with **selecting** a third non-positional attributed for use in rendering the scene **based on** two other non-positional attributes (also used in rendering the scene) as recited in claim 1.

At Col. 2, lines 18-29, Smith recites:

> In one embodiment of the present invention, the non-positional display attribute can include, a fadedness of the object against a background, a transparency of the object, a size of the object on the display, a color of the object, a blink rate of the object, a jiggle rate of the object, a drawing order of the object relative to other objects, a line thickness of the object, a contrast of the object, a spatial frequency of a pattern for the object, a halo parameter for the object, an animation rate for the object, an offset of a drop shadow for the object, a response sensitivity to user input of the object, a binocular depth of an object and a loudness of an object (if the object has an associated sound).

In this paragraph Smith gives a list of possible realizations for the non-positional display attribute. However, there is no suggestion that any two of the possible realizations may be used to select a third of the possible realizations for use in rendering a scene.

Applicant reminds the Examiner that anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As shown above, claim 1 and its dependents are clearly not anticipated by Smith.

Furthermore, regarding claim 31, Smith does not teach or suggest that "the processor is configured to select one or more auxiliary rendering attributes based on the one or more non-positional attributes, wherein the processor is configured to render the pixels according to the one or more auxiliary rendering attributes". Thus, claim 31 and its dependents are not anticipated by Smith either.

Section 103 Rejections

Claims 3, 4, 35 and 26 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Smith as applied to claims 2 and 31, and further in view of Economy et al. (USPN 5,367,615).

Claims 6, 7, 37 and 38 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Smith as applied to claims 1 and 31, and further in view of Hernandez et al. (USPN 4,723,209).

Claims 8, 12 and 39 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Smith as applied to claims 1 and 31, and further in view of Kurihara et al. (USPN 6,072,478).

Claims 14 and 44 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Smith as applied to claims 13 and 43, and further in view of Muller et al. (USPN 5,720,018).

Applicant respectfully notes that the Smith patent (USPN 6,476,829) is not prior art to the present application under 35 U.S.C. § 103. The American Inventors Protection Act of 1999 amended 35 U.S.C. § 103(c) to state that art which qualifies as prior art only under § 102(e), (f) or (g) is not available for rejections under § 103 if that art and the subject matter of the application under examination were owned by or subject to an obligation of assignment to the same assignee at the time the invention was made. This change to 35 U.S.C. § 103(c) is effective for any application filed on or after November 29, 1999. The present application is an application for patent filed after November 29, 1999. At the time the invention was made, the subject matter of present application and the Smith patent were both owned by or subject to an obligation of assignment to the same

assignee, Sun Microsystems, Inc., as evidenced by

(a) the assignment for the present application recorded in the PTO at reel 012695, frame 0618 and

(b) the assignment for the Smith patent recorded in the PTO at reel 010880, frame 0840.

Therefore, the amendment to 35 U.S.C. § 103(c) made by the American Inventors Protection Act of 1999 applies to the present application and operates to exclude the Smith patent as available prior art for rejections under 35 U.S.C. § 103.

CONCLUSION

In light of the foregoing amendments and remarks, Applicant submits the application is now in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5181-80300/JCH.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

☒ Request for Change of Correspondence Address

☐ Information Disclosure Statement

Respectfully submitted,

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